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No. _____

In The

Supreme Court of the United States

October Term, 1994

ARNIM GRUNEWALD,

Petitioner,

vs.

DAVID KATINSLY,

Respondent.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

WHETHER A LAW ENFORCEMENT OFFICER'S FORCED ENTRY INTO PETITIONER'S HOME VIOLATED PETITIONER'S CONSTITUTIONALLY PROTECTED FOURTH AMENDMENT RIGHTS AGAINST UNLAWFUL SEARCHES AND SEIZURES.

LIST OF PARTIES TO THE ACTION

Arnim Grunewald

David Katinsly

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Arnim Grunewald v. David Katinsly, No. 94-2034 (11th Cir., March 8, 1995).

JURISDICTIONAL STATEMENT

Pursuant to 28 U.S.C.A. § 1254, the Supreme Court has discretionary jurisdiction to review decisions made by the Courts of Appeal. Section 1254 states in pertinent part:

> § 1254. Courts of appeals; certiorari; . . .
>
> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree. . . .

The United States Court of Appeals for the Eleventh Circuit has rendered a decision in this case on March 8, 1995, in violation of the petitioners Constitutionally protected Fourth Amendment Rights against unlawful searches and seizures. As a result it has rendered a judgment which is contrary to the law previously set out by this Court. *See Kremen v. U.S.,* 76 S.Ct. 828 (1957); *Steinberg v. U.S.,* 76 S.Ct. 822 (1956).

This Court must accept review of this case in order to maintain consistency in its precedent, eliminate conflicting decisions of inferior courts, and guard against the violation of constitutionally protected rights.

STATUTORY PROVISIONS

Amendment IV, United States Constitution

Searches and seizures

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment XIV, United States Constitution

§ 1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§ 2. Apportionment of Representatives in Congress

Section 2. Representatives shall be appointed among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation of rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

§ 3. Persons disqualified from holding office

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

§ 4. What public debts are void

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

§ 5. Power to enforce article

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

28 U.S.C.A. § 1254

28 U.S.C.A. Sec. 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or

require the entire record to be sent up for decision of the entire matter in controversy.

STATEMENT OF THE CASE AND FACTS

This action was commenced in the United States Middle District of Florida by the Petitioner, Arnim Grunewald (hereinafter referred to as Grunewald), against the Respondent, David Katinsly, (hereinafter referred to as Katinsly) for damages sustained as a result of Katinsly's deprivation of Grunewald's civil rights. (R-1-1) That action was brought under 42 U.S.C.A. §1983 (West 1994).

On March 15, 1992, at approximately 3:52 a.m., Grunewald was peacefully sleeping at his home in Naples, Florida. At that time Katinsly, a law enforcement officer with the Collier County Sheriff's Office, without lawful authority or probable cause, entered Grunewald's home, physically assaulted Grunewald, restricted his movement, handcuffed him, and placed him under arrest in violation of his Constitutionally protected Fourth Amendment rights. As a result of Katinsly's conduct Grunewald suffered bodily injuries. (R-1-1)

Katinsly was responding to a call for assistance by a fellow officer who reportedly witnessed a Datsun 280Z traveling at a high rate of speed. (3SR-46-9).[1] The officer had pursued the vehicle to the Grunewald residence and

[1] It should be noted that the facts are presented as testified to by the Respondent, David Katinsly. All references to testimony are reference to the testimony of Katinsly and not that of Grunewald.

reported that the driver of that vehicle had entered Grunewald's home. (3SR-46-10, 11)

Upon his arrival, Katinsly was sent to the rear of the house. Once at the rear of the house, Katinsly alleges that he could see a person inside the premises who matched the description given by the officer of the suspect who had been driving the Datsun 280Z. While Katinsly was still outside the screened-in lanai area, this individual stepped out onto the lanai. (3SR-46-13). Katinsly testified that at that time he identified himself as a deputy sheriff and informed the individual that he needed to speak with him. (3SR-46-14, 15) According to Katinsly, this individual mumbled something, turned and went back into the home. (3SR-46-14).

Immediately thereafter Katinsly entered the lanai. (3SR-46-14). While inside the lanai a second individual came into view. Katinsly again identified himself and told the individual that he was conducting an investigation and looking for someone in a speeding Datsun 280Z who was believed to have entered this home. (3SR-46-15) The second individual told Katinsly that no one else was in the house (3SR-46-16) It was at this time that Katinsly, assaulted Grunewald, handcuffed him and placed him under arrest.

It was however, at the very moment that Katinsly entered that portion of the premises known as the lanai, without lawful authority, that a violation of Grunewald's Fourth and Fourteenth Amendment rights occurred.

At the trial of this matter Grunewald moved for Judgment as a Matter of Law pursuant to Rule 50 of the Federal Rules of Civil Procedure. That motion was made

on the grounds that the Defendant's warrantless entry into the screened lanai of Plaintiff's home was, as a matter of law, a violation of the Fourth and Fourteenth Amendment to the United States Constitution. That motion was denied by the trial court and the case was sent to the jury. Thereafter a jury verdict was rendered in favor of Katinsly. (R-1-34). Grunewald then filed a Motion for New Trial alleging that the district court erred in denying Grunewald's Motion for Judgment as a Matter of Law (R-1-37). That motion was also denied, (R-1-40), and Grunewald timely filed a Notice of Appeal in the United States Court of Appeals for the Eleventh Circuit. (R-1-41). The Eleventh Circuit affirmed and Grunewald now seeks review of these issues from this Court.

ARGUMENT

PETITIONER'S CONSTITUTIONALLY PROTECTED FOURTH AMENDMENT RIGHTS AGAINST UNLAWFUL SEARCHES AND SEIZURES HAVE BEEN VIOLATED

This Court has jurisdiction to review cases in the courts of appeals upon petition by any party to any civil or criminal case, before or after rendition of a judgment or decree. 28 U.S.C.A. § 1254. This Court should accept jurisdiction to review the present case as it involves important questions concerning the constitutional rights of Grunewald. The United States District Court and United States Court of Appeals for the Eleventh Circuit have rendered decisions regarding those rights which are in contrast to the applicable decisions of this Court. In

order to prevent a grave injustice from occurring, this Court should accept jurisdiction of this matter and review the decisions of the courts below.

This Court has routinely ruled that a basic principle of the Fourth Amendment, which is made applicable to the states by the Fourteenth Amendment, is that searches and seizures made inside the home ***without a warrant are presumed unreasonable.*** *Welsh v. Wisconsin,* 466 U.S. 740, 751, 104 S.Ct. 2091 (1984) (emphasis supplied). Although such a presumption is rebuttable, only the existence of exigent circumstances will rebut that presumption. In fact this Court has ruled that the police "bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches and seizures." *Welsh* at 749.

A warrantless entry is deemed unconstitutional even when a felony has been committed and there is probable cause to believe that incriminating evidence will be found within the dwelling. *Payton v. New York,* 100 S.Ct. 1371 (1980). In *Payton,* the Court found as follows:

> 'The right of the people to be secure in their . . . houses . . . shall not be violated.' That language unequivocally establishes the proposition that '[a]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and be free from unreasonable government intrusion.' *Citations omitted.* In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that

> threshold may not reasonably be crossed without a warrant. *Payton* at 1370, 1371. (emphasis added).

The Supreme Court has ruled that it is difficult to conceive of a "warrantless home arrest that would *not be unreasonable* under the Fourth Amendment when the underlying offense is extremely minor." *Id.* at 750 (emphasis supplied). In fact the Supreme Court has held that the underlying offense for which the arrest is being made is an important factor to be considered when determining whether an exigency exists to allow for such an unlawful entry. *Welch* at 752. The government generally should *not* be allowed to make such arrests unless it is with a warrant that was issued by a neutral and detached magistrate and based upon probable cause *Id.* at 750.

There are very few circumstances that support the exigent circumstances exception.[2] The Court in *Welch* stated that "exceptions to the warrant requirement are few in number and are carefully delineated", and in the context of a home entry should ***rarely*** be sanctioned when there is probable cause to believe only a minor offense has been committed. *Id.* at 749, 753 (emphasis supplied). The Court stated:

> Our hesitation in finding exigent circumstances, especially when the warrantless arrests in the

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[2] According to *Welsh* "the court has recognized only a few such emergency conditions, see, e.g., *United States v. Santana*, 427 U.S. 38, 96 S.Ct. 2406 (1976), (hot pursuit of a fleeing felon); *Schmerber v. California*, 384 U.S. 757, 86 S.Ct. 1826 (1966) (destruction of evidence); *Michigan v. Tyler*, 436 U.S. 499, 98 S.Ct. 1942 (1978) (ongoing fire), and in fact has only applied the 'hot pursuit' doctrine to arrests in the home." *Welsh* at 750.

> home are at issue, is especially appropriate when the underlying offense for which there is probable cause to arrest is relatively minor. Before agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries. When the government's interest is only to arrest for a minor offense the presumption of unreasonableness is difficult to rebut, and the government usually should be allowed to make such arrests *only* with a warrant issued upon probable cause by a neutral and detached magistrate. *Id.* at 750 (emphasis supplied).

In *Welsh*, the petitioner was arrested for driving or operating a motor vehicle while under the influence of an intoxicant in violation of Wisconsin Statute, § 346.63(1) (1977). On April 24, 1978, a witness observed a car being driven erratically. After changing speeds and veering from side to side several times, the car eventually swerved off the road and came to a stop in an open field. No damage was sustained by any person or property. The driver exited the vehicle and fled the scene. The police arrived shortly thereafter and were told by the witness that the driver was either very sick or intoxicated. The police checked the vehicles registration and determined that the vehicle owner's home was within walking distance. Without obtaining a warrant, the police proceeded to this address and when the vehicle owner's stepdaughter answered the door they entered the premises. Upon entrance to the home they found the suspect lying naked in his bed. At that time they placed him under arrest for driving or operating a motor vehicle while under the

influence of an intoxicant in violation of the Wisconsin Statute.

The U.S. Supreme Court ruled that the Wisconsin Court had erred in upholding this warrantless, nighttime entry into the petitioner's home when the arrest involved a violation of a civil traffic offense. The Court found that such an arrest was "clearly prohibited by the special protection afforded an individual in his home by the Fourth Amendment." *Id.* at 754. In addition the Court recognized that although the police may have had probable cause that a minor offense had occurred, no exigent circumstances existed to warrant entry into the petitioner's home. *Id.* at 753.

This Court has also established its refusal to allow the warrantless entry into the home even in a case involving more serious criminal activity. *See United States v. Edmondson*, 791 F.2d 1512 (1986). In *Edmondson*, the Federal Bureau of Investigation (FBI) was investigating a series of four bank robberies. During the course of that investigation, the FBI received information concerning an aborted bank robbery which the FBI suspected was done by the man responsible for the four prior robberies. They obtained the license plate number of the car used in the aborted robbery and found that it was registered to a women. They proceeded to the woman's apartment to investigate. The women's name was the only one registered to the apartment. An agent saw a man resembling the suspect in a bank surveillance photograph step outside the apartment onto a landing to smoke a cigarette and then return inside. Without an arrest or search warrant, and with weapons drawn, the FBI surrounded the

apartment and yelled for the suspect to open the door. 791 F.2d at 1513.

At that time, Edmondson opened the door, stepped back into the residence and placed his hands on his head. The agents arrested him and searched his person for weapons. The Court found that although law enforcement had probable cause to believe that Edmondson had been involved in a robbery there were no indications that he was likely to remove or destroy evidence or that he represented any danger to the officer or to the public. As a result no exigent circumstances existed to justify that arrest without a warrant. 791 F.2d 1514.

There are only a few recognized emergency circumstances where a warrantless entry would be permitted and is extremely rare when the underlying offense is minor. *United States v. Kimmons et al.*, 965 F.2d 1001 (1992). It is clearly that the pursuit of a fleeing traffic law violator is not one of them.

Factors which could indicate the existence of exigent circumstances however include; the gravity or violent nature of the offense with which the suspect is to be charged; a reasonable belief that the suspect is armed; probable cause to believe that the suspect committed the crime; strong reason to believe that the suspect is in the premises being entered; a likelihood that delay could cause the escape of the suspect or the destruction of essential evidence, or jeopardy to the safety of officers or of the public. *Kimmons*, at 1008 (1992). None of the foregoing factors were present in this case.

It is undisputed that the underlying offense in the present case was a misdemeanor speeding violation.

(3SR-46-9) Such an offense is not typically looked at as being serious or violent. Moreover, no evidence existed to establish that the officers believed, either reasonably or unreasonably, that this suspect was violent, armed, or that a gun battle was about to ensue which would place the officers or the public in danger. As a result no viable threat to the public's safety or the safety of the officers was present.

Although Katinsly argued at trial, that there were exigent circumstances present which justified his entry into the Grunewald residence, (3SR-46-17), those alleged exigent circumstances did not exist at the time of his entry. Specifically, Katinsly testified that he entered the home because he was concerned with the safety of the individuals inside the home and thought perhaps a hostage situation was developing. (3SR-46-21) This concern was based upon the fact that he had observed two individuals in the home, yet was told by one of the occupants that no one else was in the house. Katinsly stated that he was concerned that perhaps the owner of the home was unaware that someone else was in the house. (3SR-46-17). However these facts did not reveal themselves to Katinsly, by his own admission, until after he had already entered Grunewald's lanai. (3SR-46-16, 17)

The sequence of events as testified by Katinsly are as follows. He appears at Grunewald's home after receiving a call for backup from an officer who had pursued a speeding Datsun 280Z to Grunewald's residence. Upon his arrival Katinsly is sent to the rear of the home. While outside the screened-in lanai area located at the rear of the house, Katinsly sees an individual matching the suspect's description step onto the lanai. (3SR-46-14, 17)

After identifying himself and informing the individual of the situation, (3SR-46-143), the individual, mumbles something, returns to the living room and disappears from Katinsly's sight. (3SR-46-14)

In response Katinsly enters the lanai. (3SR-46-14) Once inside the lanai a second individual comes into view. Katinsly again identifies himself and states that he is conducting an investigation and looking for someone in a speeding Datsun 280Z who was believed to have entered this home. The second individual tells Katinsly that no one else was in the house. It is at this time that Katinsly proceeds further into the home, assaults Grunewald, handcuffs him and places him under arrest. (3SR-46-23)

The critical moment in this scenario is when Katinsly enters the lanai. Because the lanai is within the curtilage of the home it is entitled to the same constitutional protection as the home. It was therefore at the very moment that Katinsly entered the lanai that Grunewald's Fourth Amendment rights were, as a matter of law, violated. *State v. Rickard*, 420 So.2d 303 (Fla. 1982); *Welsh v. Wisconsin*, 466 U.S. 740, 751, 104 S.Ct. 2091 (1984); *Payton v. New York*, 100 S.Ct. 1371 (1980).

This Court has held that in determining whether an entry is supported by probable cause or exigent circumstances an examination of the information possessed by the searching official is required. *Anderson v. Creighton*, 483 U.S. 635, 641, 107 S.Ct. 3034, 3040 (1987). The information possessed by the searching official in this case at the time he entered the home did not provide him with

the necessary exigent circumstances to excuse the unlawful entrance into the home. The second man which allegedly arouses Katinsly's suspicion regarding the occupant's safety does not appear until *after* Katinsly has already entered the lanai. It was not until *after* that entry that the alleged potential threat to the occupants of the home first presented itself to Katinsly, if in fact such a threat ever existed. (3SR-46-16). By that time however, the unlawful entry had already occurred.

Grunewald's constitutional right against unlawful search and seizure was, as a matter of law, violated when Katinsly entered the screened-in lanai. At that time no exigent circumstances existed. At that time the circumstances were such that Katinsly was simply investigating a traffic offense. Contrary to the prior rulings of this Court, Katinsly's entry into the home was, as a matter of law, a violation of Grunewald's constitutional rights and as such Grunewald's Motion for Judgment as a Matter of Law should have been granted. *Welsh v. Wisconsin*, 466 U.S. 740, 751, 104 S.Ct. 2091 (1984); *Payton v. New York*, 100 S.Ct. 1371 (1980).

CONCLUSION

Based upon the foregoing, the Supreme Court must review this matter. The United States Court of Appeals for the Eleventh Circuit failed to follow the set precedent of this court as it pertains to unlawful searches and seizures. As a result, the important constitutional protections afforded Grunewald under the Fourth and Fourteenth Amendments have been violated. If this Court fails

to accept jurisdiction to review this case, the sanctity of the home and the right of people to be secure in their home will be destroyed. Denial of this petition will give law enforcement officers the ability to freely enter an individuals home for any reason and will strip the individual of any recourse against such action. This Court must now intervene to correct the grave injustice which has resulted and to prevent it from occurring again.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 94-2034
Non-Argument Calendar

D. C. Docket No. 92-357-CIV-FTM-23D

ARNIM GRUNEWALD,

Plaintiff-Appellant,

versus

DAVID KATINSLY,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(Filed March 8, 1995)

Before TJOFLAT, Chief Judge, HATCHETT, Circuit Judge, and JOHNSON, Senior Circuit Judge.

PER CURIAM:

In November 1992, Arnim Grunewald ("Appellant") brought this action under 42 U.S.C.A. § 1983 (West 1994) against David Katinsly. After a jury trial, the jury returned a verdict for Katinsly and the district court entered judgment pursuant to the verdict. Appellant contends on appeal that the district court erred in denying

his motion for a new trial. After reviewing the record, we conclude that Appellant's contention is without merit.

AFFIRMED.

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Petition For Writ Of Certiorari
To The United States Court Of Appeals
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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

WHETHER A LAW ENFORCEMENT OFFICER'S FORCED ENTRY INTO PETITIONER'S HOME VIOLATED PETITIONER'S CONSTITUTIONALLY PROTECTED FOURTH AMENDMENT RIGHTS AGAINST UNLAWFUL SEARCHES AND SEIZURES

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, David Katinsley, respectfully requests that this Court deny the Petition for Writ of Certiorari which seeks review of the Eleventh Circuit's opinion below. That opinion is reported at 50 F.3d 1037 (11th Cir. 1995) and is reprinted in the Petition for Certiorari at Appendix 1.

STATUTORY PROVISIONS

Amendment IV, United States Constitution

Searches and Seizures

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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Section 2. Representatives shall be appointed among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State,

or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United Sates, or in any way abridged, except for participation of rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

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Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

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STATEMENT OF THE CASE

This action was commenced in the United States District Court for the Middle District of Florida by Petitioner, Arnim Grunewald, against the Respondent, David Katinsley, (incorrectly spelled as "Katinsly", without the

"e", by Petitioner) for damages allegedly sustained as a result of Katinsley's deprivation of Grunewald's civil rights. (R-1-1) The action was brought under 42 U.S.C.A. § 1983.

The case was tried before a jury presided over by United States Magistrate Judge George T. Swartz on December 6 and 7, 1993 and resulted in a jury verdict for Defendant, David Katinsley, on December 7, 1993. (R-1-34) Judgment on the verdict was entered by the Court on December 9, 1993. (R-1-36) Plaintiff filed a motion for a new trial on December 17, 1993 (R-1-37) and that motion was denied by order dated December 29, 1993. (R-1-40) Petitioner then appealed to the United States Court of Appeals for the Eleventh Circuit asserting only that the trial court had erred in denying Petitioner's motion for new trial. The Eleventh Circuit affirmed in a one-paragraph per curiam opinion which is not published and Petitioner Grunewald now seeks review of that issue in the Supreme Court of the United States.

REASON TO DENY THE WRIT

THIS COURT SHOULD NOT REVIEW AN UNPUBLISHED PER CURIAM AFFIRMANCE OF A UNITED STATES COURT OF APPEALS BASED ON PROCEDURAL GROUNDS

The decision sought to be reviewed in this action is a one-paragraph per curiam affirmance of a judgment based on a jury verdict. The jury returned a verdict for Respondent, David Katinsley.

In affirming, the United States Court of Appeals for the Eleventh Circuit stated the issue on appeal and resolved it as follows:

> Appellant contends on appeal that the district court erred in denying his motion for a new trial. After reviewing the record we conclude that appellant's contention is without merit.

The decision of the United States Court of Appeals for the Eleventh Circuit appears as a decision without published opinion as *Grunewald v. Katinsly* (sic) at 50 F.3d 1037 (11th Cir. 1995).

The Court of Appeals made that decision after dispensing with oral argument pursuant to Rule 34(a) of the Federal Rules of Appellate Procedure and Eleventh Circuit Rule 34-3 which provides for placing cases on the non-argument calendar when either (1) the appeal is frivolous, or (2) the dispositive issues have been recently determined, or (3) the facts and legal arguments are adequately presented in the briefs and the decisional process will not be significantly aided by oral argument.

The Eleventh Circuit simply holds that the trial court did not abuse its discretion in denying Petitioner's motion for new trial after an adverse jury verdict. The Eleventh Circuit's decision does not deal with a constitutional issue and cannot by any stretch of the imagination constitute a conflict with any other decision of any U. S. Court of Appeals or of this Court.

Petitioner's case was fairly and completely presented to a jury, which rejected his claims. His appeal to the United States Court of Appeals for the Eleventh Circuit was restricted to the trial court's denial of Petitioner's

motion for a new trial. The decision of the Eleventh Circuit is without precedential value, is unpublished, does not deal with constitutional issues, and cannot be a conflict with any other decision of any other federal court. The Petition for Certiorari is plainly frivolous, without any merit whatsoever and should be denied.

CONCLUSION

The United States Supreme Court should not be called on to review unpublished per curiam affirmances of judgments based on jury verdicts where no constitutional provision is implicated and no conflict can possibly exist.

Respectfully submitted,

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